IMPORTANT SUPREME COURT AND HIGH COURT JUDGMENTS RELATING TO DOMESTIC ENQUIRY

Article 311 (2) (b) of the Constitution

Union of India and Another and Tulasiram Patel

In the said case, the Supreme Court has held that a Government Servant can be dismissed or removed from service without holding an enquiry under Art. 311 (2) (b) of the Constitution provided it was in the interest of the public.

The Court observed, "Government Servants who are inefficient, dishonest, corrupt or have become a security risk should not continue in service and should be summarily dismissed or removed from service and instead of being allowed to continue in it at public expense and at public detriment."

The above ruling was given by a Constitution Bench with a 4-1 majority. The judgment was written by Justice D.P. Madon Pathok, Mr. Justice Thakkar, dissented. The Judges overruled the ruling of a three Judge Bench of the Supreme Court in **Challappan's Case** which held that a delinquent Government Servant could be dismissed or removed from service only after he was given an opportunity to be heard.

Conditions Laid Down Under Article 311 (2): Stipulates three conditions where an enquiry need not be held before the dismissal or removal of a Government Servant.

(i) Where a person is dismissed, removed or reduced in rank on the ground of misconduct which has led to his conviction on a criminal charge.

(ii) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such an enquiry.

(iii) Where the President or the Governor as the case may be is satisfied that in the interest of the Security of the State, it is not expedient to hold such enquiry.

Referring to Article 311 (2) (b), the judges have pointed out that sometimes by not taking prompt action might result in the situation worsening and at times becoming uncontrollable. This could also be construed by the trouble makers and agitators as a sign of weakness on the part of the authorities.

It would not be reasonably practicable to hold an inquiry where the Government Servant terrorises, threatens or intimidates disciplinary authority or the witnesses to the effect that they are prevented from taking action or giving evidence against him. It would not be reasonably practicable to hold the enquiry where an atmosphere of violence or general indiscipline and insubordination prevails.

Referring to article 311 (2) (b) the judges said it would be better for the disciplinary authority to communicate to the Government Servant its reason for dispensing with the inquiry. The Court also observed that the stipulated clause regarding no inquiry in certain case was **Mandatory** and not **Directory.**

Justice R. Krishna Iyer on Evidence Act and Domestic Enquiry

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply.

All materials which are logically probative for a prudent mind are permissible. There is no allergy to heresay evidence provided it has reasonable nexus and creditability.

It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.

The essence of a judicial approach is: objectivity, exclusion of extraneous materials and consideration and observance of natural justice. Of course, fair play is the basis and if independence of judgment vitiates the conclusion reached, such findings even though of a domestic tribunal cannot be held good.

The simple point is, was there some evidence or was there no evidence - not in the sense of technical rules governing regular court proceedings but in a fair/common sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. (1982 II LLJ **State of Haryana v Rattan Singh** 46, SC)

Supreme Court on Evidence Act And Domestic Enquiry

The Evidence Act does not apply to enquiries conducted by the tribunals even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and it they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law.

(**Union of India and T.R. Varma** Vol. 13 FJR 237 SC)

Will the Omission to Produce the Preliminary Reports Vitiate the Enquiry?

The omission by the company to produce the preliminary reports on the strength of which the charges against these workmen were found will not vitiate the enquiry. Those reports were collected by the company to satisfy itself whether disciplinary action against the workmen should be launched or not. They did not form part of the evidence before the enquiry officer nor were they relied on by them for arriving at their findings. That being so, it was not obligatory on the company to disclose them and the omission could not be ground for holding that their non-disclosure was non-observance of the rules of natural justice.

Tata Engineering & Locomotive Co. 1960 IILLJ 812 SC

Resignation Pending Disciplinary Action

By entering into contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would however normally require to be accepted by the employer, in order to be effective. It can be read in certain circumstances an employer would be justified in refusing to accept an employee's resignation as for instance when an employee wants to leave in the middle of a work in which his presence and participation are necessary.

An employer can also refuse to accept resignation when there is a disciplinary enquiry pending against an employee. If he is allowed to resign when an enquiry is pending against him, it would enable him to escape the consequences of adverse findings against him. Therefore on such occasion the employer is justified in not accepting the resignation.

(**Central Inland Water Transport Corporation Ltd. and Tarunkanti Sengupta and Another** 1986 II LLJ 171 SC)

Should an Advocate be Permitted in all Domestic Enquiries?

In the **Board of Trustees v Nadkarni** case reported in 1983 I LLJ Page 1 - the Supreme Court stated that in the past there was informal atmosphere before a domestic enquiry forum and that strict rules of procedural law did not hamstring the enquiry. We have moved far away from this stage. The situation is where the employer has on his pay rolls Labour Officers. Legal Advisors, Lawyers in the garb of employees and they are appointed as Presenting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself.

The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer. It applies with equal vigour to all those who must be responsible for fairplay. When the Bombay Port Trust Advisor and Junior Assistant Legal Advisor would act as the Presenting cum Prosecuting Officer in the enquiry, the employee was asked to be represented by a person not trained in law, was held utterly unfair and unjust. The employee should have been allowed to appear through legal practitioner and failure vitiated the enquiry.

Bombay High Court Decision

Apart from the provisions of law, it is one of the basic principles of natural justice that the enquiry should be fair and impartial. Even if there is no provision in the Standing Orders or in Law, wherein an enquiry before the domestic mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to a denial of reasonable request to defend himself and the essential principles of natural justice would be violated.

(**Ghatge Patil Transport pvt. Ltd. and B.K. Patel and others** 1984 II LLJ Bombay High Court, Page 121)

Calcutta High Court Decision

Though the court should discourage involvement of legal practitioners in simple domestic enquiries, like disciplinary enquiries, for avoiding complications and delays, yet the court's refusal of such representation would constitute failure of the enquiry itself. Principles of Natural Justice demands conceding to such a claim. No general rule can be laid down in this respect but the issue must be left for the consideration in the light of the facts and circumstances of each individual case. (**India Photographic Co. v Saumitra Mohan Kumar** 1984 I LLJ 471 HC)

Scope of Investigation by Labour Courts and Industrial Tribunals

In cases of termination, generally the tribunal would be required to find out whether the same amounts to victimisation or unfair labour practice or was it so capricious or unreasonable as to lead to an inference that it has been based on some ulterior motives. In other words, it is to enquire into the bonafides of the management (**Assam Oil Co.** 1960 ILLJ SC, **Chartered Bank** 1960 IILLJ 222 SC),

The Indian Iron and Steel Case (1958 I LLJ 260 SC) and subsequent decisions have laid down that there could be an interference:

(i) When there is want of good faith,

(ii) When there is victimisation or unfair labour practice,

(iii) When the management head been guilty of a basic error or violation of principles of natural justice, and

(iv) When, on the materials before the tribunal, the finding is found to be completely baseless of perverse.

In the Industan Construction Case, 1965 (10) FIR, the Supreme Court again laid down that the tribunal cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry.

Want of Good Faith: This only means that on the evidence available the conclusion must have come objectively - not having made up one's mind to find the worker concerned guilty. It was pointed out in the **Mackenzie Co.** (1959 ILLJ 285 SC), the management must have materials before them to base its conclusions.

Victimisation or Unfair Labour Practice: The Supreme Court in the Bharat Sugars case (AIR 1950 188 SC), observed that the word Victimisation was not a term of Act or Law and it only meant that a certain person has become a victim and that he has been unjustly dealt with.

Where the punishment imposed was shockingly disproportionate to the misconduct, victimisation is inferred. In (1061 IILLJ 644 SC), **Bharat Sugars Case**, the Supreme Court held that before an industrial adjudication can find an employer guilty of an intention to victimise, there must be reason to think that the employer was intending to punish workmen for their union activities while purporting to take action ostensibly for some other activity.

Basic Error: If the evidence in disciplinary proceedings instituted in respect of a concerted action shows that 'A' was guilty actually, but quite erroneously the decision of the enquiry officer states that 'B' was guilty, it will be a basic error of fact.

Baseless or Perverse Findings: It has been pointed out by the courts that the findings could be said to be perverse only if it is shown that such a finding is not supported by any evidence or is entirely opposed to whole body of the evidence adduced **Doom Dooma Tea Case** (1960 IILLJ 56 SC) and **Hamdard Dawakhana Case** (1962 IIILJ 762 SC). Merely that the authority could possibly come to a different view on the evidence recorded would not make the finding of the domestic tribunal perverse. **The Calcutta High Court** (1966 IILJ 535) said 'a wrong finding is not necessarily a perverse finding'.

Personal Bias: The principles governing the doctrine of 'bias' are:-

(a) No man shall be a judge in his own case; and

(b) Justice should not only be done, but manifestly and undoubtedly seen to be done. (Subba Rao. J AIR 1959 SC 1378)

There is authority for the view that, where there are certain rules governing the procedure of enquires, the mere violation of such rules will not give a party a cause of action unless there has been, in consequence, prejudice caused. **Veerabadreshwar Rao & Oil Mill Vs Collector, Central Excise**, (AIR 1966)

Protection During Pendency of Proceedings (Sec. 33 ID ACT): Under this section when a proceeding is pending before a Conciliation Officer, Labour court, Arbitrator or Industrial Tribunal, no workman concerned in the industrial dispute pending before the said authorities could be punished by way of dismissal or discharge except under conditions :

(a) If the misconduct with which the workman had been charged is connected with the dispute pending, he cannot be discharged or otherwise punished except with the express permission of the authority before whom the proceeding is pending.

(b) Where misconduct is not connected with the proceeding pending, the workman could be dismissed or discharged for the misconduct provided he is paid or tendered a month's wages and D.A. and an application is simultaneously made before the authority concerned for approval of the action taken.

(c) Protected workmen cannot be discharged or punished whether by dismissal or otherwise except, with the express permission in writing of the authority concerned.

Any violation of the provisions stated above during pendency of proceedings before labour court or tribunal can be taken up by the employee as complaint under sec. 33A to be adjudicated and an award passed.

Section 2 A of Industrial Disputes Act: Previously individual workman could not raise industrial disputes with reference to their dismissal or discharge. It can only be by collective action. As a result of the introduction of this section on 1st December 1965, even individual workman could directly approach the conciliation officer / Government claiming relief for dismissal or discharge and this claim is deemed to be an 'industrial dispute'.

Quantum of Punishment: With the introduction of sec. IIA of I.D. Act, with effect from 15.12.1971 the absolute right of the employer to decide on the quantum of punishment has been abridged and the tribunals will have power for the first time to differ both on a finding of misconduct arrived at and also on the punishment imposed by the employer. **Firestone Case** (1973 ILLJ 278 SC)

Evidence before the Tribunal: If no domestic enquiry is at all held or if the enquiry is in any defect it is optional for the management to adduce evidence before the tribunal and justify the dismissal or hold an enquiry afresh, if the domestic enquiry is set aside on technical grounds **Motipur Sugar Case** (1965 IILJ 162 SC). It has also been held by the Supreme Court in the Ritz Theatre Case (1962 IILJ 498) that the adduction of evidence before the tribunal may be without prejudice to the management's stand that the domestic enquiry was complete and proper in itself.

Discrimination: An act of discrimination could only occur if amongst those equally situated an unequal treatment is meted to one or more of them. While some of the workmen participated in an illegal strike instigating others also to participate and also intimidated the officers were charge sheeted leaving others who participated, the same cannot be said to be discrimination. **Motor Industries Case** (1969 IIILJ 673 SC)

Retrospective Dismissal: Punishment with retrospective effect will be invalid and inoperative, if it is not specifically provided for in the standing orders. in such cases, the employer would be at liberty to set right the situation by issuing another order prospectively. The workman would be entitled to wages for the intervening period.

Criminal and Domestic Enquiry Proceedings: The scope of these two is different. The degree of proof varies. Just as criminal judgment is not binding upon a Civil Court, acquittal by a Criminal Court of a person does not bar the domestic authority to pursue the enquiry proceedings or to come to a different conclusion.

Gherao: In **Jay Engineering Case** (AIR 1968 Cal. 407), the Calcutta High Court defined Gherao as a physical blockade of a target either by encirclement of forcible occupation accompanied by wrongful confinement as also unlawful assembly. Distinctive character of Gherao is existence in it of coercive method. It is an offence punishable under the Indian Penal Code. The employer will have every right to take disciplinary action against employees for participation in Gherao whether peaceful or disorderly and punish them after holding a fair and proper enquiry.

Refusal to Obey Transfer Orders: Where the contract of employment provides for transfer, the order of dismissal for refusal to obey the transfer order will be justified except, where the order was punitive, malafide or in the nature of victimisation. Where the service rule provided for the transfer of an employee from one company to another company under the same owners, the dismissal for disobeying the order of transfer was held justified by the Supreme Court in **Madhuband Colliery Case** (1966 IILJ 738).

Discharge of Probation: Discharge of a probationer without assigning reason during the period of probation as per contract of service or standing order will be valid, except where it is held to be punitive or malafide.

Losing of Lien: Where an employee lost his lien on employment by operation of standing order for continuous absence or over-stayed of leave, the same does not amount to termination by employer. Losing of lien in such a case is not by any positive action by the employer but by automatic operation of standing order.